

**Embargoed until 11:00 a.m.
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WRITTEN STATEMENT OF

**ELLEN SEIDMAN
DIRECTOR
OFFICE OF THRIFT SUPERVISION**

Before The

**TASK FORCE ON THE HEADWATERS FOREST AND RELATED ISSUES
OF THE COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

**December 12, 2000
Room 1334, Longworth House Office Building**

Good morning. My name is Ellen Seidman. I am the Director of the Office of Thrift Supervision. I have served as Director of the OTS since my confirmation in October 1997. I am here this morning to testify in response to a subpoena served by the Committee on Resources concerning the OTS's advancement of claims against Mr. Charles Hurwitz and Maxxam Corporation for their involvement in the failure of the former United Savings Association of Texas, Houston, Texas (USAT).

The OTS began an administrative proceeding against Mr. Hurwitz, Maxxam, and several former USAT directors and officers in December 1995, almost two years before my appointment as Director, in which the OTS charged the respondents with violations of banking laws and regulations, and unsafe and unsound conduct, which led to the failure of USAT at a cost to the American taxpayers of more than \$1 billion.

The administrative proceeding is presently in the post-trial stage, pending before an administrative law judge (ALJ). The ALJ has heard the evidence in the case and received briefs and proposed findings of fact and conclusions of law filed by the parties. The ALJ will make a recommended decision to me. Pursuant to the Financial Institution Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), which established OTS as the agency responsible for regulating savings associations and their holding companies, as Director of the OTS I am the final agency decision-maker in administrative enforcement actions brought by the agency. The parties in the case will have a further opportunity to file additional briefs to me following the ALJ's recommended decision. My final decision in this matter will be based entirely on the record of the administrative proceeding, as certified by the ALJ to me. Once a final decision is issued, the respondents have a direct right of appeal to the United States Court of Appeals. The agency may not appeal a final decision of the Director.

Because I will likely be the final decision-maker in this case, I have not participated in discussions with staff or third parties concerning the substance of the administrative litigation. I have not reviewed any documentation in the case, nor held any discussions concerning the substance of the charges in the enforcement proceeding, or possible settlement of the enforcement action, with the exception of the 1999 settlement involving five respondents who were former officers or directors of USAT. I reviewed that settlement with the express, written consent of the respondents that I do so, in order to determine whether OTS should accept their settlement offer. Other than this partial settlement of the case, I have intentionally stayed apart from all staff discussions concerning the prosecution of the case or any settlement offers that may have been discussed between the OTS staff and Mr. Hurwitz and Maxxam Corporation.

Under OTS regulations, which of course are applicable in this case, I will not review a settlement offer in an enforcement proceeding until I receive a recommendation from the Chief Counsel and from the supervisory and enforcement staff. I have not received any recommendation from the Chief Counsel and the staff in this matter, other than the partial settlement involving the five former officers and directors, and therefore I have not reviewed or discussed the terms of any settlement proposal involving Mr.

Hurwitz or Maxxam Corporation. Both prosecution of the case and consideration of any settlement offers have been under the direction of our Chief Counsel, Carolyn Buck.

As is stated in the letter Ms. Buck sent to Chairman Doolittle on December 6, 2000, a copy of which is attached to this written statement, because of my role in the pending adjudicatory process, I do not have information that would be relevant to the Task Force's inquiry concerning the alleged "debt for nature" campaign for the Headwaters Forest. Further, as OTS advised the Committee in writing on three occasions, OTS has serious concerns about the impact the present inquiry may have on the adjudicatory proceeding. A reviewing court could potentially overturn the final administrative decision in a case if it concludes that the parties to the proceeding were deprived due process and fundamental fairness due to a congressional inquiry placing inordinate pressure on officials charged by law with the responsibility for making the administrative decisions in the case.

I understand and appreciate that the Task Force has attempted to limit its inquiry so as to avoid potentially interfering with the ongoing adjudicatory proceeding. In that spirit I will attempt to answer any questions, consistent with my role as the final adjudicator in the case and with my knowledge of events, some of which relate to actions prior to my appointment as Director. As we have requested and in order to maintain my impartiality in this matter, OTS's Chief Counsel, Carolyn Buck, is here and is prepared to respond to questions.

Thank you.